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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE SYNANON CHURCH, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	)	Civil Action No. 82-2303

OPINION OF THE HONORABLE CHARLES R. RICHEY

Synanon filed a complaint for declaratory relief in August 1982, pursuant to the Internal Revenue Code of 1954, 26 U.S.C. § 7428, alleging, inter alia, that the Internal Revenue Service ("IRS") erroneously revoked its tax-exempt status under § 501(c)(3) for the two fiscal years ending August 31, 1977, and August 31, 1978. Since that time, the parties have filed reams of motions, memoranda, exhibits, and affidavits, some of which remain before this court for consideration. Those outstanding motions include cross motions for summary judgment, defendant's second motion for summary judgment, defendant's motion to dismiss with prejudice, and a variety of motions relating to discovery and evidentiary matters. For the reasons set forth below, the court has determined that this case will be dismissed with prejudice for plaintiff's fraud upon the court.

BACKGROUND

Syananon was founded in 1958 by Charles E. Dederich, to rehabilitate drug addicts and to engage in related research and public education. Its application for tax-exempt status was

granted in July 1960 because it was "organized and operated exclusively for charitiable purposes" and therefore qualified under 26 U.S.C. § 501(c)(3), which excludes from taxation:

> Corporations ... organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, ... no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation ..., and which does not participate in, or intervene in ... any political campaign on behalf of any candidate for public office.

Synanon operated as a residential faciltiy and relied on group encounter sessions, known as "games," for part of its therapy. Beginning in 1967, non-addicts were also admitted to Synanon as residents, and were known as either "squares" or "lifestylers" depending on whether they worked within Synanon itself or at outside jobs. Lifestylers paid to live in Synanon facilities. In 1974, Synanon's chief counsel proposed "calling ourselves a religion," to reflect what had "been so for a long time," and won the Board of Directors' approval. Synanon's Articles of Incorporation were amended in September 1975 to include "religious purposes."

Over the years, Synanon became involved in a wide variety of endeavors other than strictly residential rehabilitation of addicts. In addition to its inclusion of lifestylers and squares, these activities included ADGAP, an advertising gift business; the Synanon Distribution Network, which solicited goods from farmers and the business community; real estate development; investment counseling, and the

training and maintenance of security forces, among others. Synanon claims that these were all designed to enhance its educational and rehabilitative objectives, while the government contends that they are evidence of its ineligibility for tax exemption. The government bases its position on three arguments, two statutory and one extra-statutory. First, it claims that Synanon is not "organized and operated exclusively for religious, charitable, scientific, ... or educational purposes," as required by § 501(c)(3). The United States further claims that Synanon fails to qualify under § 501(c)(3) because its net earnings inure to the benefit of private individuals. Finally, the government relies on Bob Jones University v. United States, 103 S. Ct. 2017 (1983), for the proposition that a tax-exempt organization must serve a public benefit, in addition to satisfying the statutory criteria. The government argues that Synanon's violent and illegal activities bar tax exemption under the Bob Jones test. Although the government vigorously disputes Synanon's self-characterization as a religion, the tax exemption decision does not depend on the resolution of that controversy. Even a bona fide religion that failed the "exclusive operation," "private inurement," or Bob Jones test would not be eligible for tax exemption.

I. SUMMARY JUDGMENT IS NOT APPROPRIATE BECAUSE THERE ARE GENUINE ISSUES OF MATERIAL FACT

The government has advanced three theories under which it claims entitlement to summary judgment: exclusive operation, private inurement, and Bob Jones "public policy"

test. The voluminous exhibits it has submitted in support of its motions consist largely of Synanon's own records as well as transcripts of taped statements by Synanon's leaders. These exhibits create a chilling portrait of an organization that advocates terror and violence. In 1977, for example, Charles Dederich's "New Religious Posture" speech warned "Don't mess with us, you can get killed dead. Physically dead." Synanon organized groups called the "Imperial Marines" and the "National Guard," and called for "Holy War" against its enemies. Synanon members have been linked with a large number of beatings. Despite the seriousness of these allegations and substantial evidence in support, the plaintiff maintains that summary judgment is precluded because genuine issues of material fact remain. Synanon relies principally on two arguments: first, that in Synanon's "gaming community," statements cannot be taken at face value but rather are often intended to polarize, exaggerate, distort, and outrage; and, second, that any violence that occurrred was not a product of the organization's policy but of individual actors. Although a party cannot avoid summary judgment by mere conclusory denials in its pleadings, Tarpley v. Greene, 684 F.2d 1, 6-7 (D.C. Cir. 1982), plaintiff here has contraverted defendant's evidence with its "gaming" explanation.

II. THIS CASE MUST BE DISMISSED BECAUSE OF SYNANON'S FRAUD UPON THE COURT

Although summary judgment is not proper given the posture of this case, the action must be dismissed due to plaintiff's wilful, systematic, and extensive destruction and

alteration of documents and tapes relevant to a determination of Synanon's tax-exempt status. This "egregious misconduct" amounts to "a scheme to interfere with the judicial machinery performing the task of impartial adjudication, ... by preventing the opposing counsel from fairly presenting ... [its] case of defense." Pfizer, Inc. v. International Rectifier Corp., 538 F.2d 180, 195 (8th Cir. 1976). More than mere fraud between the parties, or an isolated instance of perjury, plaintiff has compounded its "unconscionable plan," England v. Doyle, 281 F.2d 304, 309 (9th Cir. 1960), by its misconduct before this court.

A. Plaintiff Is Collaterally Estopped From Denying Its Systematic Destruction and Alteration of Records by the Bernstein Decision

In Synanon Foundation, Inc. v. Bernstein, et al., Superior Court of the District of Columbia, Civil Action No. 7189-78, Judge Braman found by clear and convincing evidence that Synanon engaged in a "wilful, deliberate and purposeful scheme to ... destroy extensive amounts of evidence and discoverable materials which probably would have had a dispositive bearing upon Synanon's ... non-profit status .... The scheme further had as its purpose to cover up and conceal this destruction of evidence and discoverable materials ..." (Transcript at 42.) The destruction and alteration was aimed at "materials not only related to violence, but also to money, to sexual subjects, to guns, and to others matters. (T. at 13). This destruction and cover-up were conducted with the "knowledge and approval of ... [Synanon's] legal department,"

including its general counsel Philip Bourdette. (T. at 15, 39). Judge Braman found that the destructioon took place in three "waves:" the first beginning in October 1978 and continuing through December (T. at 13-15); the second in 1979 (T. at 15-17); and a third in 1980 (T. at 17).

The doctrine of collateral estoppel bars relitigation of an issue by the losing party once it has been actually and necessarily determined, expressly or by implication, by a court of competent jurisdiction. Montana v. United States, 440 U.S. 147, 153 (1979); Parklane Hoisery Co. v. Shore, 439 U.S. 322 (1979); Jack Faucett Association v. AT&T Co., 566 F. Supp. 296, 298-99 (D.D.C. 1983). The doctrine will be applied only when the issue is "substantially the same as the issue previously litigated," Schneider v. Lockheed Aircraft Corp., 658 F.2d 835, 851 (D.C. Cir. 1981); Carr v. District of Columbia, 646 F.2d 599, 608 n.47 (D.C. Cir. 1980), and when the party who is estopped had a full and fair opportunity to litigate, id. at 602.

The prerequisites for invoking collateral estoppel are satisfied here. The court in Bernstein was faced with the question of whether Synanon was a "non-profit corporation" under District of Columbia zoning laws, and therefore examined "whether its corporate policy contravened fundamental public law policy" in light of " the claimed illegality of Synanon's corporate policy ... of terror and violence." (T. at 5.) The defendant also claimed that Synanon was not "non-profit" because "the corporate monies were deflected to private

usages." (T. at 6.) These issues are substantially identical to the government's arguments for summary judgment against Synanon: that its corporate policy of violence violates the public policy standard of Bob Jones as well as the "exclusive operation" test of § 501(c)(3), and that private inurement bars tax exemption under § 501(c)(3). The Bernstein court also devoted meticulous attention to the issue of plaintiff's destruction and alteration of documents and tapes. (T. at 11-44.) It was on the basis of that destruction, not because of Synanon's alleged corporate policies of violence or its use of funds, that Judge Braman decided to dismiss Bernstein. (T. at 11, 42.)

Before rendering his decision in Bernstein, Judge Braman heard eleven witnesses and received seventy-eight exhibits into evidence over twelve days of hearings; eight of the eleven witnesses were called by Synanon. Substantial discovery had occurred over the preceeding five years since Synanon's filing its complaint. See Memorandum for the United States in Reply to Synanon's Opposition to the Government's Second Motion for Summary Judgment at 18. This amounts to a full and fair opportunity to litigate, despite Synanon's frivolous protests.

Synanon's other objections to the application of collateral estoppel are without merit. First, the fact that Bernstein has been appealed is without significance for collateral estoppel. The rule for both District of Columbia and federal courts is that the pendency of an appeal does not impair the conclusivelness of a final judgment. Mahoney v.

Campbell, 209 A.2d 791, 794 (D.C. 1965). See also Huron Corp. v. Linclon Corp., 312 U.S. 183 (1941); Southern Pacific Communications v. AT&T Co., 567 F. Supp. 326, 329 (D.D.C. 1983). It is also well settled that a judgment of the Superior Court of the District of Columbia is entitled to full faith and credit under 28 U.S.C. § 1738. Carr, 646 F.2d 599; United States Jaycees v. The Superior Court of the District of Columbia, 491 F. Supp. 579, 581-82 (D.D.C. 1982). Finally, Synanon offers no persuasive precedents or reasoning to support its argument that the doctrine of collateral estoppel ought not to apply in a tax case. The purposes of the doctrine -- conserving judicail resources, protecting adversaries from vexatious litigation, and fostering reliance on prior judical action by minimizing the possibiltiy of inconsistent decisions -- are served by its application here as in other contexts.

B. Synanon's Fraud Upon the Court Mandates the Dismissal of this Case

"Fraud upon the court" is a distinct subclass of the broader category of "fraud." Professor Moore's definition has been adopted by a number of courts:

> "Fraud upon the court" should, we believe, embrace only that species of fraud which does or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication, and relief should be denied in the absence of such conduct. Fraud inter partes, without more, should not be a fraud upon the court ....

7 Moore's Federal Practice ¶ 60.33 (2d ed. 1983), at 60-360 & -361. See also Kerwit Medical Products v. N. & H. Instruments,

616 F.2d 833 (5th Cir. 1980); Pfizer, supra; Kupferman v. Consolidated Research & Manufacturing Corp., 459 F.2d 1072 (2d Cir. 1972); Kenner v. IRS, 387 F.2d 689 (7th Cir. 1968); Martina Theatre Corp. v. Schine Chain Theatres, Inc., 278 F. 2d 798 (1960); Southerland v. County of Oakland, 77 F.R.D. 727 (E.D. Mich. 1978); Lockwood v. Bowles, 46 F.R.D. 625 (D.D.C. 1969). Allegations of fraud upon the court arise in two contexts: first, as in this case, before there has been an adjudication, and second, in cases where a party seeks to overturn a final judgment, usually under Fed. R. Civ. P. 60(b). Whenever such a fundamental fraud is uncovered, it "calls for nothing less than a complete denial of relief." Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246 (1944).

1. The court invokes its inherent powers to dismiss this case

A district court has those inherent powers which "are necessary to the exercise of all others." Roadway Express, Inc. v. Piper, 447 U.S. 752, 764 (1980), quoting United States v. Hudson, 7 Cranch 32, 34 (1812). See also Hazel-Adams, 322 U.S. at 245-45. They are properly invoked to dismiss Synanon's case to regain its tax-exempt status because Synanon engaged in a "deliberately planned and carefully executed scheme to defraud." Id. at 245. Its systematic destruction of tapes and alteration of records was contemporaneous with an IRS audit that began in March 1979 and that focused on whether Synanon was a tax-exempt organization. The matters under investigation included the existence of a coporate policy of terror and

violence and the diversion of corporate resources for the enrichment of individuals. See Synanon's Complaint at 13; Bourdette affidavit at 5, 8. It is material relating to precisely these subjects that Judge Braman found Synanon had deliberately destroyed. (T. at 13.)

Synanon has continued its misconduct and perpetuated this fraud up to the present. First, it filed this lawsuit, having wilfully destroyed the most probative evidence of its true claim to tax-exempt status. Judge Bramam's findings directly refute Synanon's so-called innocent explanation for the nonexistence of certain tapes, i.e., that tape erasure was a normal practice within the organization and that tapes have also been lost and/or stolen. Synanon opposes defendant's summary judgment motions by relying on its "gaming" theory and by denying a corporate policy of violence, but it has effectively precluded resort to the best evidence: tapes of its high-level meetings. The continuing fraud is demonstrated by other litigation tactics. Synanon sought an admission in October 1982, pursuant to Fed. R. Civ. P. 36, that no relevant information had been denied the IRS (Synanon's First Set of Admissions, 6). Philip Bourdette represented to this court on March 21, 1983, that "[t]here was never, ever any situation where he [the IRA agent] was denied access to anything." (Hearing transcript at 32.) Mr. Bourdette made a similar representation in ¶ 6 of his affidavit filed in May 1983. These statements are disingenuous, at best, given Mr. Bourdette's knowledge that extensive campaigns of destruction

had rendered the IRS audit a charade.

In addition to the misconduct detailed above, in response to two orders of this court, dated August 17 and October 21, 1983, Synanon failed to acknowledge its scheme of targeted destruction and concealment of materials perceived to be damaging. See "Response of Plaintiff to Order of the Court to Produce" dated August 30, 1983, and "Further Response of Plaintiff to Order of the Court to Produce," dated October 25, 1983. Those orders required accounting for destruction if the materials were no longer extant. Synanon cannot complain of lack of specificity in the orders when its own destruction and alterations made greater specificity impossible. Nor can it credibly claim that the government has unfairly introduced new issues with its Bob Jones theory and therefore is now demanding material previously deemed irrelevant; the issue of a corporate policy of terror and violence was clearly raised from the start of the audit in 1979 as part of the "exclusive operation" inquiry.

The seriousness of Synanon's continuing misconduct is only magnified by the complicity of its legal department.

> [W]hile an attorney should represent his client with singular loyalty, that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court. And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court.

7 Moore's Federal Practice ¶ 60.33, at 60-359.

In addition, the public interest in conferring the privilege of tax exemption -- which amounts to a subsidy from

the public coffers -- only on deserving organizations, demands the drastic sanction of dismissal in this case. See Bob Jones University, 103 S. Ct. at 2028-29. Granting a tax exemption:

> does not concern only private parties .... Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society.

Hazel-Atlas, 322 U.S. at 246.

A comparison of this case to the leading case on fraud upon the court, Hazel-Atlas, is illuminating. 322 U.S. 238 (1944). There, the plaintiff filed suit for patent infringement and won a judgment, which the defendant later attacked for fraud upon the court. The plaintiff had begun its fraudulant scheme long before the suit was ever filed, as part of its effort to obtain a patent. It had planted an article lauding its innovation in a trade journal under a widely-known signature. After its patent application was granted, it filed suit for infringment and quoted copiously from the article during litigation. Years later, the Supreme Court found that from the Patent Office "the trail of fraud continued without break through the District Court and up to the Circuit Court of Appeals. Had the District Court learned of the fraud on the Patent Office at the original infringement trial, it would have been warranted in dismissing ... [the plaintiff's] case." Id. at 250. Here, the district court has learned of the plaintiff's fraud, on the IRS and on itself, and dismisses the case accordingly.

2. Dismissal would also be justified under Fed. R. Civ. P. 41(b)

Although the court relies on its inherent power to dismiss for fraud, it notes that dismissal would also be justified under Rule 41(b) for Synanon's failure to obey its orders of August 17 and October 21, 1983. See discussion supra. Synanon improperly tries to characterize these orders as mere requests for documents under the usual discovery rules. Clearly, the rules contemplate that, ordinarily, parties will make requests to one another under R. 34, and resort to motions under R. 37(a) only when that has failed. Rule 37(b) goes on to provide for sanctions -- including dismissal -- for failure to comply with a discovery order. While a court has the power to treat a party's precipitous motion for the production of documents as a mere request under R. 34 -- and normally will do so -- a litigant has no discretion to ignore court orders it considers improvident. The orders of August and October were issued pursuant to the court's R. 16 authority, in response to extraordinary allegations of systematic misconduct by the plaintiff in discovery with other litigants in other cases. See affidavit of Bette Fleischman. The plaintiff's failure to obey those orders and account fully for destroyed materials would justify dismissal under R. 41(b).

III. SYNANON IS NOT ENTITLED TO DISCOVERY OR RELIEF BASED ON ITS ALLEGATIONS OF SELECTIVE ENFORCEMENT OF THE LAW OR GOVERNMENT MISCONDUCT

Synanon has consistently maintained that it is entitled

to relief, and needs to conduct discovery on, alleged government misconduct, both in revoking its tax exempt status and in defending this lawsuit. The court finds that these arguments are without merit and therefore present no impediment to the dismissal of this case.

A. Syananon Has Failed to Present Even a "Colorable Claim" of Selective Enforcement of the Law

Synanon has alleged that it has been discriminatorily subjected to the enforcement of the tax laws and that the government has acted in "bad faith." See "Plaintiff's Memorandum of Law Regarding Selective Enforcement of the Law." Such claims may be brought in a civil case. See, e.g., Attorney General v. Irish People, Inc., 684 F. 2d 928 (D.C. Cir. 1982). See also Yick Wo v. Hopkins, 118 U.S. 356 (1886). Even at the discovery phase, however, the party raising a selective enforcement argument must offer a "colorable claim" that 1) it was singled out from those similarly situated, and 2) that the government's motivation was improper, i.e., based on race, religion, or another arbitrary classification. See United States v. Washington, 705 F.2d 489, 494 (D.C. Cir. 1983).

Synanon fails both prongs of this test. First, it has not shown that there are others similarly situated who have not been subjected to tax law enforcement. It has failed even to define clearly the class in which it claims membership, referring alternatively to a Christian commune, thousands of rehabilitative organizations, "new religions," organizations with indicted members, and other groups. See Plaintiff's

Memorandum, supra, at 20-24. Synanon's claims of improper motivation are equally amorphous, and ring hollow in light of its massive campaign of document and tape destruction and the serious allegations of violence and private inurement.

The court also notes that plaintiff's insistence on the crucial significance of this issue seems to rest on a misconception, to put it most charitably. The tax-exempt status of any organization is dependent on its satisfaction of the statutory and extra-statutory requirements. See § 501(c)(3) and Bob Jones Universtiy, supra. Political interference or an improper, vindictive campaign against a particular organization, leading to a denial or revocation of tax exemption, is a relevant inquiry: they would render that decision null and void. See, e.g., Center on Corporate Responsibility v. Schultz, 368 F. Supp. 863,871 (D.D.C. 1973). The appropriate relief in such a case, however, is not the automatic grant of tax-exempt status, but rather a proper, unbiased examination of the organization's qualifications. Id. at 873-78. That relief is barred in this case by plaintiff's fraud upon the court.

B. Synanon's Allegations of Governmental Bad Faith and Misconduct in the Defense of This Lawsuit Do Not Warrant Relief

Synanon has alleged that the government has improperly commingled civil and criminal investigations in the defense of this lawsuit. This has been vigorously denied time and again by counsel for the Gov't & the Tax Division ~~attorneys~~ who have refrained from participation in the activities of the Crim'l Division of the Department of Justice. The only relevant support for plaintiff's claim is 1) an attorney from the Criminal Division at the Department of Justice accompanied the civil attorneys handling this case on several witness interviews, and 2) the government obtained

criminal immunity for several witnesses pursuant to 18 U.S.C. § 6002 et seq. before obtaining their sworn statements. Neither of these actions was in any way improper.

The mere concurrence of civil and criminal investigations does not give a civil litigant a basis for either discovery or relief. Here, the United States' participation in civil litigation was precipitated by Synanon's filing of this suit. If the government also has reason to conduct a criminal investigation, its failure to do so would be tantamount to misfeasance and a violation of the duty of the executive branch to faithfully execute and apply the law. Unquestionably, the government's powers in conducting grand jury investigations are substantial and the surrounding secrecy is unnerving -- though necessary and entirely proper -- to those who believe themselves subject to its scrutiny. There is nothing improper in this, however, unless government attorneys use one arena of litigation, civil or criminal, to gain advantages to which they are not entitled in the other. See Sells Engineering, 103 S.Ct. _____ (1983). Because the government's civil attorneys are entitled to interview witnesses and to obtain grants of criminal immunity for them in the course of defending suits, they have not taken undue advantage of the government's criminal justice powers. If the government's conduct of this case, correct on its face, has been improperly influenced by the existence or the possibility of other litigation, the place to challenge such hypothetical abuses is in those other actions, when unfair advantage is sought. In this case,

plaintiff has no legitimate objection to governmental conduct.

IV. THE COURT DECLINES TO APPLY BOB JONES "PUBLIC POLICY" TEST UNDER THE FACTS OF THIS CASE

The government proposed that this case might be resolved under the "public policy" analysis recently articulated by the Supreme Court in Bob Jones University v. United States, 103 S. Ct. 2017 (1983). Specifically, it asserted that Synanon's adoption and implementation of a corporate policy of violence and terror violates fundamental law and public policy, thereby disqualifying it from tax-exempt status, regardless of its satisfaction of the statutory requirements of § 501(c)(3). The court gave careful consideration to this argument, contemplating first whether a mini-trial on this question would serve the ends of justice and conserve judicial resources, and later, whether summary judgment would be appropriate, given the collateral estoppel effect of the Bernstein case. The court decided, however, that the differences between this case and Bob Jones make a direct application of the Supreme Court's approach impossible.

One distinction between this case and Bob Jones is that the instant case involves an organization which claims to be a church, while the taxpayers in question in Bob Jones were religious schools. The distinction is significant because denying tax exemption to a church places a far greater burden

on the exercise of religion, and therefore implicates greater First Amendment concerns. See Bob Jones, 103 S. Ct. at 2035 n.29. It is also clear that the institutions in Bob Jones were clearly warned of the IRS's position on racial discrimination and tax-exempt status. Congressional approval of that administrative policy was implicit as well. Id. at 2032-34. Here, although the violence and terror alleged by the defendant are undoubtedly condemned by society, it is less clear that the proper sanction is loss of tax exemption, as opposed to the usual mechanisms of the criminal justice system. The court is reluctant to open the door to ad hoc enforcement of tax laws, even in an effort to reach serious abuses. Another important distinction between this case and Bob Jones is the existence of an avowed organizational policy that conflicts with fundamental law and public policy. The schools in Bob Jones openly discriminated on the basis of race, and so stated. Synanon has never made a comparable institutional acknowledgment.

One reason for the foregoing is that adopting this approach is that Most importantly, the Supreme Court explicitly reserved the question of "whether an organization providing a public benefit and otherwise meeting the requirements of § 501(c)(3) could nevertheless be denied tax-exempt status if certain of its activities violated a law or public policy." Id. at 2031 n.21. There was no need to answer that question in Bob Jones because the Supreme Court concluded that "[r]acially discriminatory educational institutions cannot be viewed as conferring a public benefit." Id. at 2013. This court is was concerned with the proper application of the Bob Jones analysis

if it appeared that Synanon conferred some arguable public benefit -- drug rehabiltation, for example -- while similtaneously maintaining a policy of violence and terror. Given this court's circumscribed task when facing a motion for summary judgment, in contrast to its ability to weigh evidence after trial, the court determined that this was not the place to expand or refine the Bob Jones doctrine.

CONCLUSION

For the reasons stated above, this case shall be dismissed for plaintiff's fraud upon the court and an order shall issue accordingly of even date herewith.